IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 19880 of 2005(N)

PETITIONER:

SOBHA, D/O. LATE K. NARAYANAN,
ATHIKATTUVELIYIL VEEDU, MANNANCHERRY VILLAGE,
KALAVOOR P.O., ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

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1. THE UNION OF INDIA REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI.

2. THE UNDER SECRETARY TO THE GOVERNMENT OF INDIA, FREEDOM FIGHTER'S DIVISION, MINISTRY OF HOME AFFAIRS, NEW DELHI.

BY ADV. SRI.RANJITH THAMPAN, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON 2-11-2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

Ext.P1:	**Copy of the application of the petitioner dtd.29/4/1998.**
Ext.P2:	**Copy of the order of the District Collector, Alappuzha dtd.1/3/1997.**
Ext.P3:	**Copy of the order in the copy application dtd.1/3/2001 of the Chief Judicial Magistrate Court, Alappuzha in PE.8/1122.**
Ext.P4:	**Copy of the personal knowledge certificate of Narayanan Ramankutty dtd.20-2-2001.**
Ext.P5:	**Copy of the extract of the Convict Register of Central Prison, Thiruvananthapuram relating to Ramankutty.**
Ext.P6:	**Copy of the order of the 2nd respondent granting pension to Ramankutty dtd.26-7-1999.**
Ext.P7:	**Copy of the copy application and the order in PE.7/1122 dtd.9-7-74 of the CJM.Court, Alappuzha.**
Ext.P8:	**Copy of the order of the 2nd respondent dtd.24/9/2002.**
Ext.P9:	**Copy of the Judgment in OP.No.35698/2002 dtd.18-1-2005 of this Hon'ble Court.**
Ext.P10:	**Copy of the order of the 2nd respondent dtd.8/6/2005.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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W.P.(C).No. 19880 of 2005-N.

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Dated this the 2nd day of November, 2007.

J U D G M E N T

The petitioner is challenging Ext.P10 order passed by the first respondent rejecting the application for pension under the Swatantrata Sainik Samman Pension Scheme, 1980. Earlier the petitioner had approached this Court by filing OP.No.35698 of 2002 challenging Ext.P8 order passed by the first respondent rejecting the claim. In Ext.P9 judgment this Court held that the findings rendered on various points in Ext.P8 are not correct and the 2nd respondent State Government was directed to forward their recommendation to the Central Government and the Central Government was directed to pass orders after considering the recommendation of the State Government in the light of the findings rendered by this Court.

2. The petitioner is the daughter of Sri.K.Narayanan who was a freedom fighter and participant of the Punnapra-Vayalar struggle. He was an accused in PE.No.8/1122 of the Special Magistrate Court, Alappuzha and an arrest warrant was issued against him for his participation in the said struggle and later he was declared as a proclaimed offender also. He went

under ground for one year from October, 1946 to November, 1947. The State Government had granted freedom fighter's pension to him and he died on 15/9/1994.

3. Ext.P1 is the application filed by the petitioner for grant of SSS pension, dated 29/4/1998. This was filed after the Punnapra-Vayalar struggle was recognised as part of freedom movement for the purpose of Central Scheme, in 1998. She is an unmarried daughter of the deceased Narayanan. Ext.P2 is the order by which the petitioner has been sanctioned pension under the State's scheme. Ext.P3 is the Non Availability of Record Certificate issued by the Chief Judicial Magistrate Court, Alappuzha, Ext.P4 is the Personal Knowledge Certificate issued by another freedom fighter Sri.Narayanan Ramankutty, Ext.P5 is the true extract of the convict register relating to the certifier and Ext.P6 is the order granting pension to him. Ext.P7 is the certificate issued from the Chief Judicial Magistrate Court, which shows that no records of cases relating to any case prior to 1955 is available in the court.

4. In Ext.P8 the application for pension was rejected mainly on the ground that no primary evidence was produced, the personal knowledge certificate of P.K.Sukumaran is not acceptable and the certifier Konthi Vasu is not an eligible certifier also. It was also pointed out that no NARC has been produced and the State Government has not recommended the application.

5. The validity of Ext.P8 was considered by this Court in Ext.P9 judgment. No appeal was filed from the said judgment and the findings on merits therein have thus become final. After referring to the contentions of the parties the learned Single Judge found that in the light of Ext.P12 produced by the petitioner in that case, the reasons stated as items 1 and 3 no longer survive. The relevant findings rendered by the learned Single Judge in para.3 are extracted below:

> **"Since the petitioner has produced Ext.P12 issued by the Chief Judicial Magistrate to the effect that no records of cases prior to 1955 are available in his office, the reasons given as (i) and (iii) no longer survive. Regarding reason giving as (ii) it may be noted that out of the three certificates mentioned only two is stated to be unacceptable. Of the same, P.K.Sukumaran's certificate is rejected for want of details in the certificate. There is no mention in the order whatsoever about the certificate namely the one issued by Sri.Narayanan Ramankutty. However in the counter affidavit of respondents 1 and 2 they have stated that the same is not acceptable, because at the relevant time the said Narayanan Ramankutty was in jail. In this connection it may be noted that clause (b) of the Scheme extracted in paragraph 4 of the counter affidavit only speaks about a personal knowledge certificate from a prominent freedom fighter who had undergone imprisonment for a period of atleast two years or more is required. Admittedly, Sri.Narayanan Ramankutty had undergone imprisonment for more than to years. Simply because he was at the relevant time in jail does not make his personal knowledge unworthy of credence. Personal knowledge need not be as a co-underground sufferer. As a person in the know of the activities of the movement his knowledge regarding the others in the struggle cannot be simply brushed aside on the ground that at the relevant time he was in jail. He was in jail because he was arrested and the other continued to be**

> **underground. In this connection it may be noted that in clause (a) of the Scheme, in respect of persons claiming jail sentence, two co-prisoners' certificate is insisted upon, whereas such a specific requirement is absent in clause (b). Although the respondents 1 and 2 in their counter affidavit try to justify their decision on the basis of a decision of the Patna High Court in Hari Nandan Singh v. Union of India (CWJC.No.10450). I prefer not to follow the said decision. The said decision has not been produced before me also. Therefore, I am of the opinion that the rejection or refusal to consider the certificate issued by Sri.Narayanan Ramankutty is not sustainable. Further it may be noted that the counter affidavit of the State Government mentions about a certificate issued by Sri.P.K.Chandranandan, a well known freedom fighter of Kerala certifying the correctness of the claim of the petitioner regarding the underground suffering of late Narayanan."**

His Lordship also found that the rejection of the certificates produced by the petitioner is totally unwarranted and unsustainable. It was also noticed that the State Government had sanctioned State pension after considering similar certificates. Finally the State Government was directed to consider the case of the petitioner for forwarding its recommendation.

6. Strangely in Ext.P10, again the very same reasons have been repeated. Para.3 of Ext.P10 shows that the State Government had forwarded its recommendation to the Central Government in the light of the directions of this Court in Ext.P9 judgment. In para.5, one of the reasons for the rejection is that primary evidence has not been produced and in the absence of such official primary evidence the petitioner has failed to produce the

requisite NARC. It is also stated that the personal knowledge certificate of Sri.P.K.Sukumaran is not acceptable and the certificate of Konthi Vasu is not acceptable as he was not an eligible certifier and the certificate of Sri.Narayanan Ramankutty is not acceptable as the certifier himself was in jail during the claimed underground period of the father of the petitioner. It is also stated that the recommendation of the State Government is not binding on the Central Government. A reading of Ext.P10 shows that the Central Government has not applied its mind to the findings rendered by this Court in Ext.P9. The very same reasons which were found incorrect by this Court in Ext.P9 have again been repeated. This Court in Ext.P9 judgment has clearly found that the certificates issued by Narayanan Ramankutty cannot be rejected merely because he was in jail at the relevant time. It was specifically held that rejection or refusal to consider the certificate issued by Sri.Narayanan Ramankutty is not sustainable. As the said finding has attained finality, the first respondent was not justified in stating the very same reasons in Ext.P10 order.

7. The question is whether the finding that there was no valid NARC is correct or not. In OP.No.7749/2000 in similar circumstances, this Court held that, 'after recommendation from State Government it cannot be rejected mainly on the ground that NARC was not given by the State

Government.' Hence I am of the view that the finding that there was no valid NARC is not correct as the State Government itself had recommended the application. Such recommendation evidences verification of relevant aspects by them. Further the documents produced by the petitioner shows that no records are available in the Chief Judicial Magistrate Court, Alappuzha and the same amounts to non availability of records certificate. The very same documents have been examined by the State Government to grant pension to the father of the petitioner and later to the petitioner. The Punnappra-Vayalar struggle has been recognised as part of freedom movement by the Central Government. When admittedly in Ext.P9 judgment the very same reasons have been noted as not correct, the authorities should have bestowed their attention to the said findings rendered by this Court. The Hon'ble Supreme Court had laid down in *Gurdial Singh v. Union of India* (2001(8) SCC 8) the standard of proof required in such cases and it was held that, it is not the standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of parties. Para.7 of the said decision is extracted below:

> **"The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is**

> **required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt." Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."**

8. The said dictum squarely applies here. A reading of Ext.P10 further shows that no worthwhile points have been mentioned as to why the recommendation of the State Government has not been accepted. Again in Ext.P10 the first respondent has relied upon a decision of the Patna High Court in *Kishori Singh v. Union of India* (CWJC.No.8445/97). In Ext.P9 judgment this Court had dissented from the judgment of the Patna High Court.

9. The learned counsel for the first respondent referred to the averments in the counter affidavit by it to contend that the State Government had not recommended the grant of pension. This contention is not correct in the light of the statement clearly made in para.3 of Ext.P10 that the State

Government has recommended the grant of pension.

10. It is clear that as the findings rendered by the learned Single Judge in Ext.P9, had attained finality and as the State Government had recommended the application of the petitioner, the refusal to grant pension is clearly arbitrary. The reasons found to reject the application are arbitrary. Ext.P10 practically is a verbatim reproduction of Ext.P8, quashed by this Court. The application of the petitioner is clearly supported by the personal knowledge certificate issued by Sri.Narayanan Ramankutty, who is an eligible certifier. After the recommendation by the State, no objection can be taken about validity of NARC, as held by this Court in OP.No.7749/2000. There is total non application of mind. Therefore, interference is called for by this Court in such cases. In fact, as far as the scope of judicial review, it is well settled by the decision of the Supreme Court that when there is total non application of mind on the part of the authority, this Court will be justified in interfering with the same. In *Cholan Roadways Ltd. v. G.Thirugnanasambandam* (2005(3) SCC 241) Their Lordships held in paragraph 35 that errors of fact can also be subject matter of judicial review. Their Lordships of the Supreme Court after referring to the above judgment, held in *S.N.Chandrashekar and another v. State of Karnataka and others* (2006(3) SCC 208) in paragraph 33 as follows:

> **"It is now well known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reasons inconsistent, unintelligible or substantially inadequate. (See de Smith's Judicial Review of Administrative Action, 5th Edn. p. 286)"**

In the light of the above principles also, this Court will be justified in quashing Ext.P10. Therefore, Ext.P10 is quashed. It is declared that the petitioner is entitled for grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980. The first respondent is directed to sanction SSS pension to the petitioner within a period of two months from the date of production of a copy of this judgment.

The Original Petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-